



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159354

PRELIMINARY RECITALS

Pursuant to a petition filed July 28, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on August 22, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner is entitled to replacement FS.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson, IM Spec. Adv.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On June 30, 2014 the petitioner orally reported to the agency that she had a power outage and needed replacement FS.
3. On July 7, 2014 We Energies issued a letter to petitioner confirming a power outage in her neighborhood from June 30, 2014 – July 1, 2014. See Exhibit 4.

4. On July 16, 2014 the petitioner submitted a Request for Replacement FS Benefits and the We Energies letter to the agency. See Exhibit 2.
5. On July 24, 2014 the agency issued negative notice to petitioner advising her that her request for Replacement FS was denied because she did not timely report the loss. See Exhibit 5.

DISCUSSION

In Wisconsin, FoodShare (FS) helps individuals and families who have little money to buy the food they need for good health. The U.S. Department of Agriculture is responsible for setting program rules. The Wisconsin Department of Health Services (DHS) administers the state's FS Program. County/tribal human or social service agencies (local agencies) determine eligibility for FS benefits and are responsible for issuing benefits. See *FS Handbook* §1.1.1, available online at <http://www.emhandbooks.wi.gov/fsh/>; see also 7 CFR 273.1(a).

FS can be replaced in certain instances when a household misfortune causes destruction of a participant's food. The policy states:

Replace food purchased with FoodShare benefits and destroyed in a household misfortune up to the actual amount destroyed but not more than 1 month's allotment or the amount that was actually issued to the household, whichever is less. A replacement issuance shall be provided only if a household reports the loss orally or in writing to the agency within 10 days of the date the loss occurred.

A household may experience such a loss more than once. There is no limit to the number of replacement issuances.

A replacement issuance must be provided to the household within 10 days after report of the loss. Verify the household misfortune through the fire department, police department, a community organization such as the Red Cross, a collateral contact or home visit.

Deny or delay a replacement issuance if available documentation indicates that the household's request for replacement appears to be fraudulent.

Inform the household of its right to a fair hearing to contest the denial or delay of a replacement issuance. Replacements shall not be made while the denial or delay is being appealed.

FS Handbook, §7.1.1.5.

In this case, the agency explained at hearing that the reason for the denial of replacement FS was because the petitioner did not report the loss timely, or within 10 days of the loss. The outage occurred from June 30-July 1, and therefore the agency contends the petitioner had until July 11 (10 days after July 1) to report it to the agency per the policy cited above. The agency contends that she did not report the loss until July 16.

The petitioner testified that she was in the agency on June 30 and reported the loss then. She testified that she was told to get the We Energies letter and provide it to the agency, which she did. She claimed that the mail was delayed due to it being the holiday season and believed she received the July 7 letter from We Energies on July 10th. However, she did not provide that letter to the agency or complete the request for replacement FS until July 16.

It is here we must look at the federal regulations. Those regulations provide the following regarding FS replacement:

(3) *Replacement restrictions.* (i) Replacement issuances shall be provided only if a household timely reports a loss orally or in writing. The report will be considered timely if it is made to the State agency within 10 days of the date food purchased with Program benefits is destroyed in a household misfortune.

(ii) No limit on the number of replacements shall be placed on the replacement of food purchased with Program benefits which was destroyed in a household misfortune.

(iii) Except for households certified under 7 CFR part 280, replacement issuances shall be provided in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which shall be replaced up to their full value.

(4) *Household statement of loss.* (i) Prior to issuing a replacement, the State agency shall obtain from a member of the household a signed statement attesting to the household's loss. The required statement may be mailed to the State agency if the household member is unable to come into the office because of age, handicap or distance from the office and is unable to appoint an authorized representative.

(ii) If the signed statement or affidavit is not received by the State agency within 10 days of the date of report, no replacement shall be made. If the 10th day falls on a weekend or holiday, and the statement is received the day after the weekend or holiday, the State agency shall consider the statement timely received.

(iii) The statement shall be retained in the case record. It shall attest to the destruction of food purchased with the original issuance and the reason for the replacement. It shall also state that the household is aware of the penalties for intentional misrepresentation of the facts, including but not limited to, a charge of perjury for a false claim.

7 CFR §274.6(a)(3)-(4).

Thus, even if I believe petitioner that she orally reported the loss on June 30, she was still required to provide the signed statement within 10 days of that, which would have been July 10. She did not provide anything in writing until July 16. The regulation is clear and mandatory; if the signed statement is not received by the State agency within 10 days of the date of report, no replacement shall be made. Therefore, replacement FS cannot be issued.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The petitioner is not entitled to Replacement FS.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of September, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 9, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability